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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/471,777	12/23/1999	Christopher Sachse	AND1P313	7944
29838	7590	08/30/2004	EXAMINER	
OPPENHEIMER WOLFF & DONNELLY, LLP (ACCENTURE)			CORRIELUS, JEAN M	
PLAZA VII, SUITE 3300			ART UNIT	
45 SOUTH SEVENTH STREET			PAPER NUMBER	
MINNEAPOLIS, MN 55402-1609			2172	

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/471,777

Applicant(s)

SACHSE ET AL.

Examiner

Jean M Corrielus

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This office action is in response to the request for consideration filed on May 4, 2004, in which claims 1-20 are presented for further examination.

Drawings

2. Applicants are required to furnish the formal drawings in response this office action. No new matter may be introduced in the required drawing. Failure to timely submit a drawing will result in **ABANDONMENT** of the application.

Response to Arguments

2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites a broad range or limitation, which are connected to each other. Claim 1 recites a broad limitation together does not clearly set forth the metes and bounds of the patent protection desired and it is not enable one having ordinary skill in the art to comprehend the invention. Applicant is reminded that a broad range or limitation together with a narrow

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range or limitation that falls within the broad range or limitation is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation "receiving an activation signal"; "transmitting a signal to initiate retrieving of network performance data and network event data generated from at least one network monitor monitoring a network system and the relocating of the data into a common directory"; and "transmitting a signal to initiate the manipulation of the data and the loading of the manipulating data into a database" which are the narrower statement of the range/limitation. Applicant is advised to amend the claims to solve the 112 rejection set forth in this office action.

Claim 2 recites, "Wherein the signal to initiate the manipulating and storing of the data initiates a controller program that transmits a signal to initiate the manipulation of the data". This limitation is vague and indefinite and it is not comprehend to one having ordinary skill in the art to make and use the invention.

In claims 1-20, applicant respectively recites “a signal”. It is unclear as to whether this recited “a signal” is different from each other. Clarification or amendment to the claims is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-20 as best understood by the examiner are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandra et al., (hereinafter “Sandra”) US Patent no. 6,397,359.

As to claim 1, Chandra discloses a system for tracking network performance on a continuing basis in a manner, which will reflect that performance from an end user perspective across a variety of hardware, operating software and end user specific application program. In particular, Chandra discloses the claimed “receiving an activation signal” (col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48); “transmitting a signal to initiate retrieving of network performance data and network event data generated from at least one network monitor monitoring a network system and the relocating of the data into a common directory” (col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48; col.19, lines 10-40). Chandra does not explicitly disclose the use of “transmitting a signal to initiate the manipulation of the data and the loading of the manipulating data into a database”. However, Chandra discloses the use of auto thresholding that eliminating the need for a user to have to specify specific value for a threshold

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and may be unable to successfully flag gradual changes in network performance, which take place over an extended period of time (col.24, lines 15-57). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Chandra system by incorporating the use of transmitting a signal to initiate the manipulation of the data and the loading of the manipulating data into a database in the same conventional manner as disclosed by Chandra (col.24, lines 15-57). One having skill in the art would find it motivated to utilize such a modification because that would enhance the capability of maintaining the integrity of the object database.

As to claim 2, Chandra discloses “wherein the signal to initiate the manipulating and storing of the data initiates a controller program that transmits a signal to initiate the manipulation of the data” (col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48).

As to claim 3, Chandra discloses the claimed “wherein the controller program transmits a signal to initiate calculation of statistics from the data” (col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48).

As to claim 4, Chandra discloses the claimed “wherein the controller program transmits a signal to initiate assigning of key codes to the data” (col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48).

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As to claim 5, Chandra discloses the claimed “wherein the controller program transmits a signal to initiate sorting of the data” (col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48).

As to claim 6, Chandra discloses the claimed “wherein the controller program transmits a signal to initiate concatenating of the data” (col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48).

As to claim 7, Chandra discloses the claimed “wherein the controller program transmits a signal to initiate loading of the data in the database” (col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48).

As to claim 8, Chandra discloses the claimed “transmitting a signal to initiate a clean archive program for deleting files from an archive directory, transmitting a signal to initiate a table extract program for extracting data from tables stored in the database, transmitting a signal to initiate a trigger reporting program for generating reports, transmitting a signal to initiate a purge record program for deleting records from the database, and transmitting a signal to initiate a database backup program for backing up stored on the database”.(col.2, lines 50-60; col.3, lines 51-52); col.8, lines 27-34; col.9, lines 38-67; col.10, lines 2-15; col.12, lines 33-48; col.19, lines 10-40).

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Claims 9-16 are for computer program for performing the method of claims 1-8. They are, therefore, rejected under the same rationale.

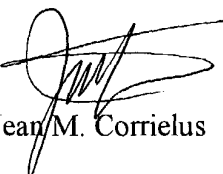
Claims 17-20 are for system for performing the method of claims 1-8. They are, therefore, rejected under the same rationale.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M. Corrielus whose telephone number is (703) 306-3035. The examiner can normally be reached on Monday - Friday (12:00pm - 7:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jean M. Corrielus

Patent Examiner

August 26, 2004